

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff/Respondent,

v.

Criminal Case No. 13-20246

Civil Case No. 14-14385

James O. Harper,

Sean F. Cox

Defendant/Petitioner.

United States District Court Judge

ORDER DECLINING TO ISSUE
A CERTIFICATE OF APPEALABILITY

On January 15, 2016, this Court issued an Opinion & Order denying Petitioner a § 2255 motion filed by Defendant/Petitioner James O. Harper.

In an Order issued on or about April 7, 2016, the United States Court of Appeals for the Sixth Circuit issued an Order remanding for this Court to determine whether to grant a deny a certificate of appealability.

For the reasons set forth in the Court's January 15, 2016 Opinion & Order, the Court concludes that Petitioner is not entitled to habeas relief.

A certificate of appealability must issue before a petitioner may appeal the district court's denial of his § 2255 Motion. 28 U.S.C. § 2253(c)(1)(B); FED. R. APP. P. 22(b).

Section 2253 provides that a certificate of appealability may issue only if a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). As the United States Supreme Court has explained this standard:

. . . the petitioner need not show that he should prevail on the merits. He has

already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.

Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). As the Court has stated, “[w]here a district court has rejected the constitutional claim on the merits, the showing required to satisfy 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

If a certificate of appealability is issued by a district court, it must indicate which specific issue or issues satisfy the required showing. 28 U.S.C. § 2253(c)(3).

This Court concludes that reasonable jurists would not find the Court’s assessment of Petitioner’s claims debatable or wrong. The Court therefore **DECLINES** to issue a certificate of appealability.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: April 7, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on April 7, 2016, by electronic and/or ordinary mail.

S/Jennifer McCoy

Case Manager